

NOTICE OF PROPOSED CHANGES ON PROCUREMENT IN THE
REGULATIONS OF THE ALASKA INDUSTRIAL DEVELOPMENT
AND EXPORT AUTHORITY

BRIEF DESCRIPTION

The Alaska Industrial Development and Export Authority proposes to change regulations in its procurement program relating to procurement exceptions, bid submission, dollar amounts, and proposed evaluations.

The Alaska Industrial Development and Export Authority proposes to adopt regulation changes in Title 3 of the Alaska Administrative Code dealing with its procurement program, including the following:

1. 3 AAC 100.050(b)(4) is proposed to be changed as follows: add language regarding contracts to assist in financing or developing a qualified energy development
2. 3 AAC 100.050(b)(5) is proposed to be changed as follows: add language to include Arctic infrastructure development
3. 3 AAC 100.050(b)(9) is proposed to be changed as follows: add language to include Arctic infrastructure development
4. 3 AAC 100.050(b)(10) is proposed to be changed as follows: adding a new section regarding transactions involving or for the benefit of any subsidiary entity of the authority that is part of a development project under AS 44.88.172 or a qualified energy development under AS 44.88.680 or an Arctic infrastructure development under AS 44.88.830
5. 3 AAC 100.240(a) is proposed to be changed as follows: language requiring the submission of bids and proposals in sealed envelopes has been modified to allow for the electronic submission of such documents
6. 3 AAC 100.360(a) is proposed to be changed as follows: language requiring the submission of bids and proposals in sealed envelopes has been modified to allow for the electronic submission of such document
7. 3 AAC 100.370(b) is proposed to be changed as follows: language is changed requiring a procurement officer to evaluate proposals)
8. 3 AAC 100.460(b), (c) & (d) is proposed to be changed as follows: the reasonable and adequate limit has been increased from \$5,000 to \$10,000; the limit for verbal quotes has been increased from \$5,000 to \$10,000; the limit for written quotes has been increased from \$25,000 to \$50,000; the small procurement upper limit for construction projects has been increase from \$100,000 to \$200,000
9. 3 AAC 100.490 is proposed to be changed as follows: the non-competitive limit has been increased from \$5,000 to \$10,000 to match the limits set in 3 AAC 100.460
10. 3 AAC 100.580(a), (c) & (d) is proposed to be changed as follows: the small protest limit has been changed from \$5,000 to \$10,000 to match the limits set in 3 AAC 100.460

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Sherrie M. Siverson, AIDEA Executive Assistant at 813 West Northern Lights Boulevard, Anchorage, AK 99503. Additionally, the Alaska Industrial Development and Export Authority will accept comments by facsimile at 907-771-3044 and by electronic mail at ssiverson@aidea.org. The comments must be received no later than Monday, September 14, 2015.

Oral or written comments also may be submitted at a hearing to be held on Wed. September 9, 2015 in the AIDEA Board Room, 813 West Northern Lights Boulevard, Anchorage, AK 99503. The hearing will be held from 10:00 a.m. to 11:00 a.m. and might be extended to accommodate those present before 11:00 a.m. who did not have an opportunity to comment.

You may submit written questions relevant to the proposed action to Sherrie M. Siverson, AIDEA Executive Assistant at ssiverson@aidea.org, or by mail to 813 West Northern Lights Boulevard, Anchorage, AK 99503. The questions must be received at least 10 days before the end of the public comment period. The Alaska Industrial Development and Export Authority will aggregate its response to substantially similar questions and make the questions and response available on its website at www.aidea.org/About/Regulations.aspx. The Alaska Industrial Development and Export Authority may, but is not required to, answer written questions received after the 10-day cut-off date and before the end of the comment period.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Sherrie Siverson at 907-771-3008 no later than Tue. September 8, 2015 to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System, or on the AIDEA website at www.aidea.org/About/Regulations.aspx and by contacting Sherrie Siverson, AIDEA Executive Assistant at 813 West Northern Lights Boulevard, Anchorage, AK 99503, 907-771-3008.

After the public comment period ends, the Alaska Industrial Development and Export Authority will either adopt the proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.**

Statutory Authority: AS 36.30.015; AS 44.88.050; AS 44.88.080; AS 44.88.085;

Statutes Being Implemented, Interpreted, or Made Specific: AS 44.88.080; AS 44.88.085; AS 44.88.172; AS 44.88.680; AS 44.88.830;

Fiscal Information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: August 9, 2015

John C. Springsteen, Executive Director

AIDEA keeps a list of individuals and organizations interested in its regulations. Those on the list will automatically be sent a copy of all of AIDEA Notices of Proposed Regulation Changes. To be added to or removed from this list go to <http://list.state.ak.us/soalists/aidea-regulations-notices/jl.htm> enter your email address, choose join or leave and click "Submit Request."

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alaska Industrial Development and Export Authority
2. General subject of regulation: Amending procurement regulations related to procurement exceptions, bid submissions, proposal evaluations, and to increase dollar amounts.
3. Citation of regulation (may be grouped): 3 AAC 100.050(b)(4); 3 AAC 100.050(b)(5); 3 AAC 100.050(b)(9); 3 AAC 100.050(b)(10); 3 AAC 100.240(a); 3 AAC 100.360(a); 3 AAC 100.370(b); 3 AAC 100.460(b), (c) & (d); AAC 100.490(a)(2); and 3 AAC 100.580(a), (c) & (d);
4. Department of Law file number, if any: _____
5. Reason for the proposed action:
 - Compliance with federal law
 - Compliance with new or changed state statute
 - Compliance with court order
 - Development of program standards
 - Other (please list): _____
6. Appropriation/Allocation: 0
7. Estimated annual costs in the aggregate to comply with the proposed action to:
 - Private Persons: 0
 - Other State Agencies: 0
 - Municipalities: 0

8. Cost of implementation to the state agency and available funding (in thousands of dollars):

	Initial Year FY 2016	Subsequent Years
Operating Cost	\$ <u> 0 </u>	\$ <u> 0 </u>
Capital Cost	\$ <u> 0 </u>	\$ <u> 0 </u>
		\$ <u> 0 </u>
1002 Federal Receipts	\$ <u> 0 </u>	\$ <u> 0 </u>
1003 General fund match	\$ <u> 0 </u>	\$ <u> 0 </u>
1005 General fund	\$ <u> 0 </u>	\$ <u> 0 </u>
1005 General fund	\$ <u> 0 </u>	\$ <u> 0 </u>
/program		
1037 General fund	\$ <u> 0 </u>	\$ <u> 0 </u>
/mental Health		
Other	\$ <u> 0 </u>	\$ <u> 0 </u>

- 9.. Name: Tom Erickson
- Title: Chief Procurement Officer
- Address: 813 West Northern Lights Boulevard
Anchorage, Alaska 99503
- Telephone: 907-771-3951
- E-mail address: terickson@aidea.org

10. The origin of the proposed action:
- Staff of state agency
 - Federal government
 - General public
 - Petition for regulation change
 - Other (identify)

11. Date: August 7, 2015
Anchorage, AK
- Prepared by: Sherrie M. Siverson, Executive Assistant
Alaska Industrial Development & Export Authority
- Telephone: 907-771-3008

3 AAC 100.050(b) is amended to read:

(b) This chapter applies to the expenditure of the authority's funds under a contract, except that this chapter does not apply to

- (1) transactions of the types listed as exempt under AS 36.30.850(b);
- (2) loans, loan guarantees, bonds, bond guarantees, or other indebtedness of the authority;
- (3) contracts that delegate, in whole or in part, the authority's investment powers or fiduciary duties with respect to investments;
- (4) contracts to finance or acquire a development project under AS 44.88.172, or contracts with an agent or other person to operate or manage a development project under AS 44.88.172, **or contracts to assist in financing or developing a qualified energy development by any means authorized under AS 44.88.680(a)(1), (2), (4) or (5), or contracts to assist in financing or developing an Arctic infrastructure development by any means authorized under AS 44.88.830(a)(1), (2), (4) or (5);**
- (5) expenditures **by or for the benefit** of a partner, developer, limited liability company, or other entity participating with the authority in the financing or development of a project or qualified energy development **or Arctic infrastructure development**, whether through a public-private partnership agreement or otherwise, unless expressly adopted in the agreement between the authority and the partner, developer, limited liability company, or other entity;
- (6) contracts between the authority and the state, its political subdivisions, and other governments or political subdivisions;

(7) contracts for legal services relating to existing or probable lawsuits in which the authority is or may become a party;

(8) transactions relating to the operation and protection of assets or disposals of property, equipment, or supplies that are acquired through foreclosure, deeds in lieu of foreclosure, or other proceedings against collateral for loans or guarantees of the authority; or

(9) transactions relating to the operation and protection of assets or disposals of property, equipment, or supplies acquired after default under, or a termination of, a contract regarding a development project under AS 44.88.172 or a qualified energy development under AS 44.88.680 **or an Arctic infrastructure development under AS 44.88.830; or**

(10) transactions involving or for the benefit of any subsidiary entity of the authority that is part of a development project under AS 44.88.172 or a qualified energy development under AS 44.88.680 or an Arctic infrastructure development under AS 44.88.830.

(Eff. 9/25/2013, Register 207; am ____/____/____, Register ____)

Authority: AS 36.30.015 AS 44.88.050 AS 44.88.080

3 AAC 100.240 (a) is amended to read:

(a) A bid **must be submitted with the invitation to bid number clearly identified. The rest of the bid must be in a form that cannot be viewed by the procurement officer until after the closing date of the request for proposal** [SUBMITTED ON PAPER MUST BE SUBMITTED IN A SEALED ENVELOPE WITH THE INVITATION TO BID NUMBER IDENTIFIED ON

THE OUTSIDE OF THE ENVELOPE]. Upon receipt, the bid and any bid corrections shall be stored in a secure place until the time and date set for bid opening.

(Eff. 9/25/2013, Register 207; am ____/____/____, Register ____)

Authority: AS 36.30.015 AS 44.88.080

3 AAC 100.360 (a) is amended to read:

(a) A proposal **must be submitted with the request for proposal number clearly identified.**

The rest of the proposal must be in a form that cannot be viewed by the procurement officer until after the closing date of the request for proposal. [SUBMITTED ON PAPER MUST BE

SUBMITTED IN A SEALED ENVELOPE WITH THE COMPETITIVE PROPOSAL IDENTIFIED ON THE OUTSIDE OF THE ENVELOPE]. Upon receipt, the proposal and any proposal shall be stored in a secure place.

(Eff. 9/25/2013, Register 207; am ____/____/____, Register ____)

Authority: AS 36.30.015 AS 44.88.080

3 AAC 100.370(b) is amended to read:

(b) A [THE PROCUREMENT OFFICER, OR A] procurement evaluation committee consisting of at least **three** [THE PROCUREMENT OFFICER AND TWO OTHER] authority employees, shall evaluate proposals. Other authority employees, public officials, experts, or representatives of participating organizations may be added as appropriate if there is no conflict of interest and the procurement evaluation committee is made up of at least **three** [THE PROCUREMENT OFFICER AND TWO] employees of the authority.

(Eff. 9/25/2013, Register 207; am ____/____/____, Register ____)

Authority: [AS 36.30.015](#) [AS 44.88.080](#)

3 AAC 100.460(b) is amended to read:

(b) The authority will use reasonable and adequate procedures, and make records that facilitate auditing of the procurement, when procuring supplies, services, professional services, or construction estimated to cost not more than **\$10,000** [\$5,000].

3 AAC 100.460(c) is amended to read:

(c) The authority will use the following procedures in the procurement of supplies, services, professional services, or construction estimated to cost more than **\$10,000** [\$5,000] but not more than **\$50,000** [\$25,000]:

(1) for the solicitation,

(A) at least three firms or persons will be contacted for a quotation or informal proposal; and

(B) the solicitation may be made verbally or in writing; in the solicitation, the authority will include the specifications, the award criteria, and the date and time responses are due;

(2) for the award, the authority will make the award

(A) in accordance with the specifications and award criteria in the solicitation; and

(B) to the responsive and responsible firm or person that submitted the lowest quotation or the informal proposal that is the most advantageous to the authority;

(3) as part of the file on the procurement, the procurement officer shall include the

(A) name of the person who made the solicitation and the date of the solicitation;

(B) information provided by the authority under (1)(B) of this subsection;

(C) names of the firms or persons contacted, a summary of any verbal responses, and copies of all quotations or informal proposals received; and

(D) justification for the award.

3 AAC 100.460(d) is amended to read:

(d) The authority will use the following procedures for the procurement of supplies, services, professional services, or construction estimated to cost more than **\$50,000** [\$25,000], but not more than \$100,000; **or for construction estimated to cost more than \$50,000, but not more than \$200,000**:

(1) for the solicitation,

(A) at least three firms or persons will be contacted for a quotation or an informal proposal;

(B) the solicitation will be made in writing; in the solicitation, the authority will include the specifications, the award criteria, the requirement that the response be made in writing, and the date and time responses are due;

(2) for the award, the authority will

(A) make the award

(i) in accordance with the specifications and award criteria in the solicitation; and

(ii) to the responsive and responsible firm or person that submitted the lowest quotation or the informal proposal that is the most advantageous to the authority; and

(B) provide written notice of the award, including the name of the successful offeror, to each firm or person providing a quotation or informal proposal, and will describe protest rights under 3 AAC 100.580 and the time limitations within which a protest must be received;

(3) as part of the file on the procurement, the procurement officer shall include

(A) a copy of the solicitation made under (1)(B) of this subsection;

(B) the names of the firms or persons contacted and copies of all written quotations or informal proposals received; and

(C) documentation of and the justification for the award.

(Eff. 9/25/2013, Register 207; am ____/____/____, Register ____)

Authority: AS 36.30.015 AS 44.88.080

3 AAC 100.490 (a) is amended to read:

(a) a procurement officer may contract for supplies, services, professional services, or construction without the use of competitive source selection

(1) for any contract issued by another state or federal government agency where the authority is authorized to place orders under the terms and conditions of that contract;

(2) for a contract where the total cost is not more than **\$10,000** [\$5,000] and the price is fair and reasonable;

(3) for a contract that was previously competitively bid, but where only one nonresponsive bid was received and the chief procurement officer determines that negotiation with that bidder is in the best interest of the authority because

(A) an immediate need exists for the goods or services; or

(B) re-solicitation is unlikely to increase the number of bids;

(4) for a contract where time is of the essence and the chief procurement officer makes a determination that

(A) the time required to solicit competitive bids or proposals for the equipment or services would adversely impact the authority's program or mission;

(B) the price for goods or services is reasonable compared to the impacts of a delay;

(C) the proposed contractor is in a unique position to be able to meet the authority's needs; and

(D) the duration of the contract is limited; or

(5) for a contract where the chief procurement officer determines that award of a contract by competitive sealed bidding, competitive sealed proposals, or small procurement procedures is not practicable, and that award to a single source is in the authority's best interests as no other reasonable source of the supplies or services is available that could meet the authority's requirements and schedule; the authority may advertise its intent to make a single source award to determine if a single source award is appropriate.

(Eff. 9/25/2013, Register 207; am ____/____/____, Register ____)

Authority: AS 36.30.015 AS 44.88.080

3 AAC 100.580(a) is amended to read:

(a) An interested party shall attempt to informally resolve any protest with the procurement officer regarding a procurement with a total award value of \$100,000 or less; **or for a construction with a total award value of \$200,000 or less.** If the attempt is unsuccessful, the interested party may protest the solicitation or the award of a small procurement contract solicited or awarded under 3 AAC 100.460. The protest must be filed with the executive director. The protester must file a copy of the protest with the procurement officer.

3 AAC 100.580(c) is amended to read:

(c) If protesting the award of a small procurement contract of not more than **\$50,000** [\$25,000], the protest must be filed not later than 10 days after the date of the solicitation or award, whichever is later.

3 AAC 100.580(d) is amended to read:

(d) If protesting the award of a small procurement contract greater than **\$50,000** [\$25,000], a protest must be filed not later than 10 days after the date that notice of award is made.
(Eff. 9/25/2013, Register 207; am ____/____/____, Register ____)

Authority: AS 36.30.015 AS 44.88.080